IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 7901 of 2007(N)

OS.73/2004 of MUNSIFF COURT, HOSDRUG
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PETITIONER:

THE PARENTS AND TEACHERS ASSOCIATION,
GOVT.HIGHER SECONDARY SCHOOL, CHEEMENI,
REPRESENTED BY ITS PRESIDENT.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:
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1. KUDUKKEN MADHAVAN, S/O. KUDUKKACHI
LAKSHMI, PADINHAREKARA, CHEEMENI.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KASARGOD.

3. THE STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, KASARAGOD.

BY ADV. SRI.T.K.VIPINDAS
BY GOVERNMENT PLEADER SRI. C.M. SURESH BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF PLAINT IN OS 73/04.**

EXT.P2 **TRUE COPY OF COMMISSIONER REPORT.**

EXT.P3 **TRUE COPY OF PLAN.**

EXT.P4 **TRUE COPY OF APPLICATION FILED BY PETITIONER.**

EXT.P5 **TRUE COPY ORDER IN IA 3531/06 IN OS 73/04.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 7901 OF 2007

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Dated this the 19th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order in I.A.3531/01 in O.S.73/04. The said application was filed by the first defendant in the suit to remit the Commissioner's plan and report as according to it necessary particulars in toto are not collected by the Commissioner. In fairness the learned counsel for the writ petitioner had taken me through the entire Commissioner's report. The disputed property is having an extent of 20 cents. According to the plaintiff it forms part and parcel of two acres of land obtained by his mother under a certificate of purchase. The plaintiff claims this 20 cents of property on the strength of a settlement deed executed by the mother in his favour. The survey number shown in the certificate of purchase and in the settlement deed are extracted by the Commissioner in his report. Thereafter, the Commissioner has inspected the property, located the property with the assistance of the

survey plan. The Commissioner had clearly demarcated the properties and has stated in which survey number the property lies. Therefore, what is expected by the Commissioner is to submit a factual report of the prevailing things on the spot. Thereafter, it is for the parties to explain or give evidence regarding their respective claims.

The learned counsel had invited my attention to a portion of the report wherein it is stated that the property claimed by the plaintiff as plaint schedule is now having a measurement of 31¼ and a quarter cent whereas the plaint schedule as in the document it is only 28 cents. Therefore, in a suit of this nature when the plaintiff claims right and possession over the property by virtue of a document, it is for the plaintiff to establish to the satisfaction of the Court regarding the same. It is an equal responsibility of the plaintiff to show that the property obtained by him and the property claimed by him under the certificate of purchase are one and the same. These are all matters of evidence. A Commissioner may not be able to substitute it with a report.

Whatever is necessary and what is available on the spot has already been reported by the Commissioner and therefore there is no necessity now again to remit the Commissioner's plan and report. Therefore, the order under challenge is not liable to be set aside and it is confirmed.

However, I make it clear that the writ petitioner is at liberty to adduce evidence in support of his contention and to attack the Commissioner's report if according to him it is wrong.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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